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JAMES H. MCKENNEY,
Clerk.

Supreme Court of the United States

GUSTAVUS LEACH ET AL.,
Plaintiffs in Error,
vs.
CHARLES R. BURR,
Receiver, and
SAMUEL H. LOCKE,
Defendants in Error.

No. 13,266.
Cal. Oct. Term, 1901,
No. 355.
Oct. Oct. Term, 1902,
No. 140.

Motion to Add Parties, and Brief in Support Thereof.

WILLIAM A. MELOY,
Attorney for Plaintiffs in Error.

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Supreme Court of the United States.

GUSTAVUS LEACH ET AL., *Plaintiffs in Error,*	
vs.	No. 18,238. Cal. Oct. Term, 1901, No. 385.
CHARLES R. BURR, *Executor, and* SAMUEL H. LUCAS, *Defendants in Error.*	Cal. Oct. Term, 1902, No. 145.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The plaintiffs in error in this cause respectfully represent and suggest as follows, to wit:

The record herein shows that among the issues herein involved are the questions of the due execution and validity of the last will and testament of one Ezra W. Leach, now deceased, of whom they are the next of kin and heirs at law, and whether the same, as to a portion of his property, was not intended and contrived to evade the law relating to devises for charitable uses, as contained in Section 1635 of the Code for the District of Columbia, forbidding the devise of real estate for church and religious purposes within thirty days before the death of the devisor.

At or immediately before the devisor's death he was seized and possessed of the following real property in the District of Columbia :

1st. All of lot one hundred and thirty (130), in Uniontown (now Anacostia), fronting twenty-eight (28) feet on the south side of Fillmore Street, near its intersection with Pleasant Street, by a uniform depth of one hundred and eleven (111) feet, which lot is improved ;

2nd. The north eight front of lot one hundred and thirty-one (131), adjacent to parcel one (1), having the same depth ;

3rd. All of lot four hundred and twenty-three (423), in Uniontown, fronting twenty-four feet on the east side of Jefferson Street, near its intersection with Pierce Street, with a uniform depth of one hundred and thirty (130) feet, which lot is improved ;

4th. The east one-half of lot four hundred and twenty-four (424), adjacent to parcel eight (3), fronting twelve feet on the east side of Jefferson Street, by the same depth ;

5th. All of lot six (6), in section nine (9), of the subdivision known as Barry Farm, fronting one hundred and sixty-five (165) feet on the north side of Howard Avenue, near its intersection with Nichols Avenue, by a uniform depth of two hundred and sixty-four (264) feet ;

6th. The east twenty-five (25) feet front of lot numbered seven (7), adjacent to parcel five (5), by the same depth.

An examination of the Land Records of said District, as the same are recorded in the office of the Recorder of Deeds for said District, show that since, and notwithstanding the pendency of these proceed-

ings, instruments of conveyance of the premises aforesaid have been executed by the defendant-in-error, Samuel H. Lucas, purporting to be the devisee under the will so questioned, and placed upon the records in the office of said recorder, as follows, viz:

1st. The first conveyance is a deed in fee, dated on the 20th day of February, 1901, acknowledged on the following day before William E. Jordan, a Notary Public in said District, and recorded on the 25th day of March, 1901, in Liber 2559, folio 124 et seq., signed by Samuel H. Lucas and Virginia Lucas, his wife, and purporting to convey to the Anacostia Baptist Church, a body corporate, duly incorporated under the general incorporation laws in force in said District, the land described in parcels 1 and 2 above mentioned.

2nd. The second conveyance is a deed of trust, dated and acknowledged on the 14th day of March, 1901, and recorded on the 10th day of April, 1901, in Liber 2533, folio 438 et seq., signed by Samuel H. Lucas et ux., and purporting to convey to Samuel H. Walker and Michael I. Weller, trustees of the Eastern Building and Loan Association of Washington, D. C., parcels three (3) and four (4) above mentioned, in trust, to secure an indebtedness stated by said Lucas to be due by him to John E. Herrell, treasurer of said Association, in the sum of eleven hundred ($1,100) dollars.

3rd. The third conveyance is a deed of trust, dated and acknowledged on the 8th day of April, 1901, and recorded on the 10th day of April, 1901, in Liber 2533, folio 441 et seq., signed by Samuel H. Lucas et ux., and purporting to convey to Samuel H. Walker and Michael I. Weller, trustees of the Eastern Building and Loan Association of Washington, D. C.,

portions of parcels five (5) and six (6) above mentioned, in trust, to secure an indebtedness stated by said Lucas to be due to John E. Herrell, treasurer of said association, in the sum of five hundred ($500) dollars.

4th. The fourth conveyance is a deed in fee, dated on the 23rd day of April, 1901, acknowledged on the 30th day of April, 1901, and recorded on the 8th day of May, 1901, in Liber 2570, folio 88 et seq., signed by Samuel H. Lucas et ux., and purporting to convey to Charles W. Harleston parcels three (3) and four (4), above recited.

5th. The fifth conveyance is a deed of trust, dated the 23rd day of April, 1901, acknowledged the 30th day of April, 1901, and recorded the 8th day of May, 1901, in Liber 2570, folio 91 et seq., signed by Charles W. Harleston et ux. Ellen, and purporting to convey to Henry K. Simpson and John McKee, trustees, the property described in the fourth conveyance, in trust, to secure a debt due by Charles W. Harleston to Samuel H. Lucas of four hundred ($400) dollars

6th. The sixth conveyance is a deed of trust, dated on the 29th day of April, 1901, acknowledged on the following day, and recorded on the 2nd day of May, 1901, in Liber 2557, folio 323 et seq., signed by Samuel Lucas et ux., and purporting to convey to Samuel H. Walker and Michael I. Weller, trustees of the Eastern Building and Loan Association of Washington, D. C., all of parcel six (6) above recited, in trust, to secure an indebtedness stated to be due by Samuel H. Lucas to John E. Herrell, treasurer of said association, in the sum of thirteen hundred ($1,300) dollars.

7th. The seventh conveyance is dated and acknowledged on the 12th day of August, 1901, and recorded on the following day in Liber 2582, folio 215 et seq.,

signed by Samuel H. Lucas et ux., and purporting to convey to Samuel H. Walker and Michael I. Weller, trustees of the Eastern Building and Loan Association of Washington, D. C., a portion of parcel five (5) above described—not included in the third conveyance—in trust to secure an indebtedness stated by said Lucas to be due by him to John E. Herrell, treasurer of said association, in the sum of two thousand ($2,000) dollars.

8th. The eighth conveyance is dated on the 31st day of October, 1901, and recorded on the 16th day of November, 1901, in Liber 2590, folio 432 et seq., signed by Samuel H. Lucas et ux., and purporting to convey to W. Cleary Sullivan all of parcel six (6) above recited—not included in the third and seventh conveyances—in trust to secure Rudolph B. Behrend the sum of fifteen hundred ($1,500) dollars.

Wherefore, inasmuch as the several grantees and beneficiaries aforesaid, by acceptance and the recording of said deeds have become parties in interest in the proceedings on this writ of error, and in the final determination thereof by this court, it is hereby suggested and moved by the plaintiffs in error that by due order and citation they, the said The Anacostia Baptist Church, a corporation organized under the laws of the District of Columbia; Samuel H. Walker, trustee; Michael I. Weller, trustee; The Eastern Building and Loan Association; Charles W. Harleston; Henry K. Simpson, trustee; John McKee, trustee; W. Cleary Sullivan, trustee; and Rudolph B. Behrend be made parties respondent in this cause, and brought into this court to abide its final order and judgment herein.

WILLIAM A. MELOY,
Attorney for Plaintiffs-in-Error.

DISTRICT OF COLUMBIA, } *ss:*

John H. Adriaans, being duly sworn, deposes and says that he is a member of the bar of the Supreme Court of the District of Columbia, and as such has examined many titles among the land records of the District of Columbia and elsewhere; that he has personally examined the records of conveyances mentioned in the foregoing suggestion and motion, and that the several records named therein, and the facts stated in said motion with respect thereto, and the recording thereof, are true.

JOHN H. ADRIAANS.

Sworn to and subscribed before me, this 8th day of December, A. D. 1902.

J. R. YOUNG, *Clerk*,
By M. A. CLANCY, *Asst. Clerk.*

Brief in Support of Motion to Add Parties.

The change of title to the real estate involved in these proceedings, *pendente lite*, vesting interests therein in the parties named, fully justifies the motion herewith filed, in analogy to the following cases:

"In an action to try title to a mining claim where the defendant sells his interest in the claim to a third person pending suit, the vendee may be substituted as defendant in place of the vendor."

Jordan v. Duke (1898), 53 Pac. Rep., 197.

"When land is conveyed by defendant in ejectment, *pendente lite*, the grantees are entitled to be substituted, and a default against their grantor will be set aside on their motion."

Plummer v. Brown, 64 Cal., 429.

"Where, pending action to recover land, a mortgagee has acquired the defendant's interest in the land, he may be substituted as defendant."

McKinnis v. Mortgage Co., 55 Kans., 259.

"When the receiver of an insolvent National Bank has been displaced by an 'agent' appointed under the acts of Congress in that behalf, it is proper practice to substitute, upon motion, the 'agent' as the plaintiff on the record in place of the 'receiver' in a suit already commenced by the latter."

McConville v. Gilmour (1888), 36 Fed. Rep., 277.

"In an action commenced by a State treasurer to recover money deposited in a bank under a statute authorizing such deposits, the State, which is the real party in interest, may properly be substituted as plaintiff by amendment, as such substitution makes no change in the cause of action."

Nebraska v. Hayden (1898), 89 Fed. R., 46.

"In a suit by a bondholder * * * substitution as complainants of the trustees in the mortgages securing the bonds does not change the cause of action, and is permissible."

Benson v. San Diego (1900), 100 Fed. Rep., 158.

"An assignment of a claim pending suit thereon, calls for no alteration or amendment in the complaint, but only for an application for a change of parties. If granted, the name of the party substituted should appear in the judgment file."

Fish v. Smith (1900), 73 Conn., 377.

"A party bidding at a foreclosure sale makes himself thereby a party to the proceedings and subject to the jurisdiction of the court for all orders necessary to compel the perfection of his purchase."

Blossom v. R. R., 1 Wall., 655;
Williams v. Morgan, 111 U. S., 684;
Kneeland v. Loan Co., 136 U. S., 89, 95.

"Where an appellant in this court becomes bankrupt, after his appeal taken, his assignee in bankruptcy, upon the production of the deed of assignment of the register in bankruptcy, duly certified by the clerk of the proper court, may, on motion, be substituted as appellant in the case."

Herndon v. Howard, 9 Wall., 665;
Gates v. Goodloe, 101 U. S., 613.

"The decree below, dismissing the bill, was entered after a new receiver had been appointed. An appeal to this court was taken in the name of the old receiver as the complainant, the new receiver becoming a surety in the appeal bond. In this court the new receiver was, on his own motion, substituted as the complainant and appellant, without prejudice to the proceedings already had; and the motion of the appellees to dismiss the appeal was denied."

Bowden v. Johnson, 107 U. S., 251.

WILLIAM A. MELOY,
Attorney for Plaintiffs in Error.